

JURY INSTRUCTIONS

UNITED STATES OF AMERICA

v.

DANNY L. MULLINS, JR.

Case No. 1:21CR00024

Judge James P. Jones

Instruction No. 1

Ladies and gentlemen of the jury, I am going to give you final instructions now, since you will soon leave the courtroom to begin your deliberations. I will also send a written copy of these instructions with you.

As you know, the government has accused Mr. Mullins of committing certain crimes. These are only charges. In order for you to find any defendant guilty of a crime, you must be convinced beyond a reasonable doubt that he committed the crime as charged. If you are not convinced beyond a reasonable doubt that he committed a crime as charged, you must find him not guilty of that crime.

During the course of the trial, you received all the evidence you may properly consider in order to decide the case. Your decision in the case must be made solely on the evidence presented at the trial. You should consider all the evidence that was presented to you.

Do not allow sympathy or prejudice to influence you. You must not reach conclusions based on personal likes or dislikes, generalizations, stereotypes or biases. The law demands of you a just verdict, unaffected

by anything except the evidence, your common sense, and the law as I explain it to you.

At times during the trial, you saw the parties make objections to questions or to answers by witnesses. This simply means that the parties were requesting that I make a decision on a particular rule of law. Do not draw any conclusion from such objections, or from my rulings on the objections. These are only related to the legal questions I had to determine and should not influence your thinking. When I sustained an objection to a question the witness was not allowed to answer it. Do not attempt to guess what answer might have been given had I allowed the question to be answered. Similarly, if I sustained an objection or told you not to consider a particular statement, you must put that statement out of your mind, and you must not refer to that statement later in your deliberations.

Neither in these instructions nor in any ruling, action, or remark that I have made during the course of this trial have I intended to give any opinion or suggestion as to what your verdict should be. During this trial, I may have occasionally asked questions of witnesses in order to bring out

facts not then fully covered in testimony. Do not assume that I hold any opinion on the matter to which my questions are related.

Instruction No. 2

It is my job to decide what rules of law apply to this case. I have explained some of these rules to you during the course of the trial, and I will explain others of them to you before you go to the jury room. While the parties may have properly commented during the trial on some of these rules, you are to be guided only by what I say about them. You must follow all the rules as I explain them to you. You may not follow some and ignore others. Even if you disagree or do not understand the reasons for some of the rules, you are bound to follow them.

Instruction No. 3

If you decide that the government has proved beyond a reasonable doubt that a defendant is guilty, it will be my job to decide what his punishment will be. You should not try to guess what the punishment might be. It should not enter into your consideration or discussions at any time.

Instruction No. 4

The decision you reach in the jury room, whether guilty or not guilty, must be unanimous. You must all agree. Your deliberations will be secret. You will never have to explain your verdict to anyone.

Instruction No. 5

The law presumes a defendant to be innocent of a crime. Thus, a defendant, although accused, begins the trial with a clean slate. That is to say with no evidence against him, and the law permits nothing but legal evidence presented before the jury to be considered in support of any charge against a defendant. So, the presumption of innocence alone is sufficient to acquit a defendant unless the jurors are satisfied beyond a reasonable doubt of the defendant's guilt from all the evidence in the case. This presumption of innocence is an abiding presumption that goes with a defendant throughout the entire case and applies at every stage. As I have said many times, the government has the burden of proving the defendant's guilt beyond a reasonable doubt. Some of you may have served as jurors in civil cases where you were told that it was only necessary to prove that a fact is more likely true than not. In criminal cases, the government's proof must be more powerful than that; it must be beyond a reasonable doubt.

Instruction No. 5A

Remember that the Mr. Mulins had an absolute right not to testify or offer evidence. The fact that he did not testify should not be considered by you in any way, or even discussed in your deliberations. I remind you that it is up to the government to prove Mr. Mullins guilty beyond a reasonable doubt. It is not up to Mr. Mullins to prove that he is not guilty.

Instruction No. 6

An important part of your job will be making judgments about the testimony of the witnesses who testified in this case. You should decide whether you believe what each person had to say, and how important that testimony was. In making that decision I suggest that you ask yourself a few questions. Did the person impress you as honest? Did the witness have any particular reason not to tell the truth? Did the witness have a personal interest in the outcome of the case? Did the witness seem to have a good memory? Did the witness have the opportunity and ability to observe accurately the things he or she testified about? Did the witness appear to understand the questions clearly and answer them directly? Did the witness's testimony differ from the testimony of other witnesses? These are a few of the considerations that will help you determine the accuracy of what each witness said.

Instruction No. 7

This Court has taken judicial notice of certain facts in this case. Having determined the following facts to be accurate and readily determined without requiring further proof, the jury may accept the following as fact:

1. On March 13, 2020, the President of the United States declared the ongoing Coronavirus Disease (COVID-19) pandemic to be an emergency under § 501(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act.
2. On March 18, 2020, the President of the United States signed into law the Families First Coronavirus Response Act (“FFCRA”).
3. On March 27, 2020, the President of the United States signed into law the Coronavirus Aid, Relief, and Economic Security (“CARES”) Act.
4. Together, these laws created a framework of expanded unemployment benefits for individuals who were not otherwise eligible for traditional unemployment benefits. These benefits were referred to as

Pandemic Unemployment Assistance, Federal Pandemic Unemployment Compensation, and Lost Wages Assistance Program.

You may, therefore, accept these facts as proven without independent proof of the existence of these facts.

Instruction No. 8

You have heard evidence that government witnesses Ms. Chytka and Ms. Mullins pled guilty to a crime which arose out of the same events for which Mr. Mullins is on trial here. You must not consider such guilty pleas as evidence that Mr. Mullins is guilty of the crimes charged. His guilt or innocence must be determined by you solely based upon the evidence introduced at the trial of this case.

Some people in the position of government witnesses are entirely truthful when testifying. Still, you should consider the testimony of such an individual with particular caution. They may have had reasons to make up stories or exaggerate what others did because they wanted to help themselves.

If the government files a motion stating that a defendant has assisted in the prosecution of another person, the court may consider that fact in imposing a more lenient sentence or reducing a sentence already imposed. The ultimate sentence imposed, however, is up to the judge, and not to the

government. In other words, the government cannot promise any defendant a lesser sentence based on his or her cooperation.

Instruction No. 9

Prior conviction of a crime that is a felony or involves a dishonest act or false statement is one of the circumstances you may consider in determining the credibility of a witness.

Instruction No. 10

There are two types of evidence that are generally presented during a trial: direct evidence and circumstantial evidence. Direct evidence is the testimony of a person who asserts or claims to have actual knowledge of a fact, such as an eyewitness. Circumstantial evidence is proof of a chain of facts and circumstances indicating the existence of a fact. The law makes no distinction between the weight or value to be given to either direct or circumstantial evidence. Nor is a greater degree of certainty required of circumstantial evidence than of direct evidence.

While you should consider only the evidence in the case, you are permitted to draw such reasonable inferences from the testimony and exhibits as you feel are justified in the light of common experience. In other words, you may make deductions and reach conclusions which reason and common sense lead you to draw from the facts that have been established by the evidence in the case.

Instruction No. 11

During the trial items were received into evidence as exhibits. The exhibits will be available in electronic format for viewing in the jury room, and the Clerk will show you how to view the exhibits. Examine the exhibits if you think it would help you in your deliberations.

Instruction No. 12

A separate crime is charged in each count of the Indictment. Each charge, and the evidence pertaining to it, must be considered by you separately. The fact that you may find the defendant guilty or not guilty of one of the counts should not control your verdict as to any other count.

Instruction No. 13

The Indictment charges in Count One that beginning on or about May 5, 2020, and continuing to on or about December 31, 2020, Mr. Mullins and others knowingly conspired to defraud the United States. To find Mr. Mullins guilty of this charge, you must be convinced that the government has proved each of the following beyond a reasonable doubt:

FIRST: That an agreement existed between two or more persons to defraud the United States by filing fraudulent unemployment benefit claims in connection with the COVID-19 pandemic;

SECOND: That Mr. Mullins was a party to or member of that agreement;

THIRD: That Mr. Mullins joined the agreement or conspiracy knowing of its objective to defraud the United States and intending to join together with at least one other conspirator to achieve that objective; that is, that the defendant and at least one other alleged conspirator shared a unity of purpose and the intent to achieve a common goal or objective, to defraud the United States; and

FOURTH: That at some time during the existence of the agreement or conspiracy, at least one of its members performed an overt act in order to further the objective of the agreement.

If the government fails to prove all of these elements beyond a reasonable doubt, you must find Mr. Mullins not guilty of this Count.

Instruction No. 14

“To defraud the United States” means to cheat the United States out of money. It also means to obstruct or interfere with one of the United States government’s lawful functions, by deceit, craft, trickery, or dishonest means.

Instruction No. 15

The intent of a person or the knowledge that a person possesses at any given time may not ordinarily be proved directly because there is no way of directly scrutinizing the workings of the human mind. In determining the issue of what a person knew or what a person intended at a particular time, you may consider any acts done by that person and all other facts and circumstances received in evidence which may aid in your determination of that person's knowledge or intent.

You may infer, but you are certainly not required to infer, that a person intends the natural and probable consequences of acts knowingly done. It is entirely up to you, however, to decide what facts to find from the evidence received during this trial.

Instruction No. 16

The Indictment charges in Count Nineteen that beginning on or about June 27, 2020, in the Western Judicial District of Virginia, Mr. Mullins, as a principal and aider and abettor, knowingly committed fraud in connection with emergency benefits. To find Mr. Mullins guilty of this charge, you must be convinced that the government has proved each of the following beyond a reasonable doubt:

FIRST: That Mr. Mullins knowingly made or caused to be made a false statement on an application for unemployment benefit claims in connection with a COVID-19 pandemic program;

SECOND: That the false statement made on the application in furtherance of the scheme was material;

THIRD: That Mr. Mullins acted with the specific intent to defraud the United States; and

FOURTH: That the scheme was in connection with the delivery of or payment of unemployment benefits associated a COVID-19 pandemic program.

If the government fails to prove all of these elements beyond a reasonable doubt, you must find Mr. Mullins not guilty of this Count.

Instruction No. 17

The defendant is charged as a principal, aider, and abettor. A person who aids, abets, counsels, commands, induces or procures the commission of a crime is punishable as a principal. Therefore, if you find that the government has proven beyond a reasonable doubt that Mr. Mullins knowingly aided, abetted, counseled, commanded, induced, or procured another person in the commission of the offense, you may find a defendant guilty of the count.

Instruction No. 18

The Indictment charges in Count Twenty-two that beginning on or about May 5, 2020, and continuing to on or about December 31, 2020, in the Western Judicial District of Virginia, Mr. Mullins and others knowingly conspired and agreed with others to commit mail fraud. To find Mr. Mullins guilty of this charge, you must be convinced that the government has proved each of the following beyond a reasonable doubt:

FIRST: That an agreement existed between two or more persons to commit mail fraud;

SECOND: That Mr. Mullins was a party to or member of that agreement;

THIRD: That Mr. Mullins joined the agreement or conspiracy knowing of its objective to commit mail fraud and intending to join together with at least one other conspirator to achieve that objective; that is, that Mr. Mullins and at least one other alleged conspirator shared the intent to achieve a common goal or objective, to defraud the United States; and

FOURTH: That at some time during the existence of the agreement or conspiracy, at least one of its members performed an overt act in order to further the objective of the agreement.

If the government fails to prove all of these elements beyond a reasonable doubt, you must find Mr. Mullins not guilty of this Count.

Instruction No. 19

A “conspiracy” is an agreement between two or more persons to join together to accomplish some unlawful purpose. It is a kind of partnership in crime in which each member becomes the agent of every other member.

In order to sustain its burden of proof under Count One or Count Twenty-two of the Indictment, the government must prove beyond a reasonable doubt that one of the members of the alleged conspiracy knowingly performed at least one overt act and that this overt act was performed during the existence or life of the conspiracy and was done somehow to further the conspiracy.

The term “overt act” means some type of outward, objective action performed by one of the parties to or one of the members of the agreement or conspiracy which evidences that agreement.

Although you must unanimously agree that the same overt act was committed, the government is only required to prove one overt act. The overt act may, but for the alleged illegal agreement, appear totally innocent and legal.

Instruction No. 20

One may become a member of a conspiracy without knowing all the details of the unlawful scheme or the identities of all of the other alleged conspirators. If a defendant understands the unlawful nature of a plan or scheme, and knowingly and intentionally joins in that plan or scheme on one occasion, that is sufficient to convict the defendant for conspiracy, even if the defendant had not participated before, and even if the defendant played only a minor part. The government need not prove that the alleged conspirators entered into any formal agreement, nor that they directly stated between themselves all the details of the scheme.

Similarly, the government need not prove that all of the details of the scheme alleged were actually agreed upon or carried out, nor must it prove that all of the persons alleged to have been members of the conspiracy were such, or that the alleged conspirators actually succeeded in accomplishing their unlawful objectives.

Mere presence, even with knowledge that a crime is being committed, or the mere fact that certain persons have associated with each

other, does not necessarily establish proof of the existence of a conspiracy.

Also, a person who has no knowledge of a conspiracy, but who happens to act in a way that advances some purpose of a conspiracy does not thereby become a conspirator.

Instruction No. 21

The Indictment charges in Count Forty that beginning on or about June 27, 2020, in the Western Judicial District of Virginia, Mr. Mullins, as a principal and aider and abettor, with the intent to defraud, committed mail fraud. To find Mr. Mullins guilty of this charge, you must be convinced that the government has proved each of the following beyond a reasonable doubt:

FIRST: That Mr. Mullins knowingly devised or knowingly participated in a scheme to defraud to obtain money by means of materially false or fraudulent statements or representations;

SECOND: That Mr. Mullins acted with the specific intent to defraud the United States;

THIRD: That a false representation or statement in furtherance of the scheme was material; and

FOURTH: That, in advancing, furthering, or carrying out this scheme to defraud, Mr. Mullins either used the mails or caused the mails to be used on the date specified in Count Forty.

Instruction No. 22

A “scheme” is merely a plan for accomplishing an object.

“Fraud” is a general term which embraces all the various means by which one person can gain an advantage over another by false statements or representations.

Thus, a “scheme to defraud” is any plan, device, or course of action to deprive another of money by means of false or fraudulent statements or representations.

The government is not required to prove every misrepresentation charged in the Indictment. It is sufficient if the government proves beyond a reasonable doubt that one or more of the alleged material misrepresentations were made in furtherance of the alleged scheme to defraud. However, you cannot convict Mr. Mullins unless all of you agree as to at least one of the material misrepresentations.

A statement or representation is false if it is untrue when made and if the person making the statement, representation, claim or document or causing it to be made knew it was untrue at the time it was made.

A representation or statement is fraudulent if it was falsely made with the intention to deceive.

The false or fraudulent representation must relate to a material fact or matter. A material fact is one which would reasonably be expected to be of concern to a reasonable and prudent person in relying upon the representation or statement in making a decision.

In order to establish a scheme to defraud, the government must also prove that the alleged scheme contemplated depriving another of money. However, the government is not required to prove that Mr. Mullins originated the scheme to defraud. Furthermore, it is not necessary that the government prove that he actually realized any gain from the scheme or that the intended victim actually suffered any loss.

The government is not required to prove that Mr. Mullins actually mailed anything or that he even intended that the mails would be used to further or to carry out the scheme. However, the government must prove beyond a reasonable doubt, that the mails were in fact used in some

manner to further or to carry out the scheme to defraud and that the use of the mails by someone was reasonably foreseeable to the defendant.

It is not necessary that the item mailed was itself false or fraudulent or contained any false or fraudulent statement or representation. However, the government must prove beyond a reasonable doubt that the use of the mails in some way furthered, or advanced, or carried out the scheme.

“Material” means having a natural tendency to influence, or is capable of influencing, the particular unemployment benefit program to which it was directed.

Instruction No. 23

The Indictment charges in Count Sixty-Three that beginning or around June 27, 2020, Mr. Mullins knowingly used or caused to be used, or aided and abetted in the use of, without lawful authority, a means of identification of another person, during and in relation to the offenses enumerated in Count Nineteen or Count Forty.

To find Mr. Mullins guilty of this charge, you must be convinced that the government has proved each of the following beyond a reasonable doubt:

FIRST: That Mr. Mullins knowingly transferred, possessed, or used or aided and abetted the transfer, possession, or use of a means of identification;

SECOND: That Mr. Mullins knew the means of identification belonged to another actual, specific person;

THIRD: That Mr. Mullins transferred, possessed, or used the means of identification without lawful authority, or aided and abetted thereof; and

FOURTH: That Mr. Mullins transferred, possessed, or used the means of identification during and in relation to the conspiracy to defraud in connection with emergency benefits as charged in Count Nineteen or mail fraud as charged in Count Forty of the Indictment.

If the government fails to prove all of these elements beyond a reasonable doubt, you must find Mr. Mullins not guilty.

Instruction No. 24

The term “means of identification” means any name or number that may be used, alone or in conjunction with any other information, to identify a specific individual.

The government must prove that Mr. Mullins knew that the means of identification in fact belonged to an actual, specific person, not a fictitious person.

The government does not have to prove that Mr. Mullins stole the means of identification, only that there was no legal authority for the defendant to transfer, possess, or use it in the manner charged.

The phrase “during and in relation to” in Count Sixty-Three means that the means of identification was transferred, possessed, or used in furtherance of a crimes charged in Courts Nineteen and Forty.

“Without lawful authority” means the use of another person’s identifying information without a form of authorization recognized by law. A person acts without lawful authority if the person uses a means of identification without the consent or knowledge of the owner or if the

person uses the identification in order to commit a crime even with the consent of the owner. Under the law, no amount of consent from a co-conspirator may constitute "lawful authority" to use one's personal information to engage in an otherwise unlawful purpose. Therefore, a co-conspirator's use of the defendant's information, even with the defendant's consent, constitutes "aggravated identify theft" when used to engage in a fraud against the United States.

Instruction No. 25

The Indictment charges that certain events or conduct occurred on or about a specific date.

The government does not have to prove that the events or conduct occurred on the exact date alleged. Rather, it is sufficient if they occurred on a date reasonably near the date stated in the Indictment.

Instruction No. 26

The word “knowingly” means that the act in question was done voluntarily and intentionally, not by mistake or accident.

Instruction No. 27

It is your duty as jurors to talk with one another and to deliberate in the jury room. You should try to reach an agreement if you can. Each of you must decide the case for yourself, but only after consideration of the evidence with the other members of the jury. While this is going on, do not hesitate to re-examine your own opinions and change your mind if you are convinced that you were wrong. But do not give up your honest beliefs solely because the others think differently, or merely to get the case over with. In a very real way you are judges, judges of the facts. Your only interest is to determine whether the government has proved the defendant guilty beyond a reasonable doubt.

During your deliberations, you must not communicate with anyone else outside of the jury about the case. You must not use any electronic device, including cell phones, the Internet, social media, a blog, website, or any other method to communicate about the case or conduct any research.

When you go to the jury room to begin considering the evidence in this case, you should first select one of the members of the jury to act as your foreperson. This person will help to guide your discussions in the jury room. Once you are there, if you need to communicate with me, the foreperson will send a written message to me. Do not attempt to communicate with me except by a written message. Bear in mind that you must not reveal to any person, including in any written message to me, how you stand as to your verdict, numerically or otherwise, until after you have reached a unanimous verdict. As I mentioned several times, the decision you reach must be unanimous, you must all agree.

There is a verdict form, which I will send with you to the jury room. I will also send to the jury room with you a copy of the Indictment. And again, I remind you that the Indictment is not evidence. It is simply a statement of the charges. And when you have reached a unanimous decision, and the verdict form is completed, the foreperson should sign the verdict form, and announce that you are ready to return to the courtroom.